CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

GLORIA SCOTT AND *
DEANIA JACKSON, *
* NO. 96-8461
VERSUS * DIVISION "I"
* SECTION 14
THE AMERICAN TOBACCO *
COMPANY, INC., ET AL. *

Transcript of proceedings before the Honorable Richard J. Ganucheau, Judge Pro Tempore, Civil District Court, Parish of Orleans, State of Louisiana, 421 Loyola Avenue, New Orleans, Louisiana 70112, commencing on June 18, 2001.

* * * * *

Tuesday Morning Session
May 6, 2003
9:38 a.m.

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I N D E X

Witness Page
DAVID E. TOWNSEND, Ph.D.
Voir Dire (By Mr. Bencomo) 19897
Direct-continued (By Mr. Belasic) 19916

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Tuesday Morning Session
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P R O C E E D I N G S
* * * * *

(In open court with a jury present:)
THE COURT:
Good morning. Please be seated.
Mr. Bencomo, are you ready to continue?
MR. BENCOMO:
Yes, Your Honor.
Good morning, Your Honor. Good morning, ladies and gentlemen of the jury.
-- -- --
DAVID E. TOWNSEND, Ph.D.
being previously duly sworn by the Clerk, testifies and says as follows:
-- -- --
VOIR DIRE (Continued)

BY MR. BENCOMO:
Q. Good morning, Dr. Townsend.
A. Good morning.
Q. Just a few brief areas and then I will tender you back to Mr. Belasic.
I did not ask you yesterday whether or not you were a marketing expert. I'm assuming your answer is that you are not; is that correct?
A. I'm not a marketing expert.
Q. You have never created an ad for a marketing campaign?
A. That's true.

Q. And you never participated in marketing campaigns?
A. That's true.
Q. Thank you.
Dr. Townsend, in response to a question from Mr. Belasic, you discussed an organization by the name of Coresta; is that not correct?

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A. That's right.
Q. And why don't you tell the jury and refresh their recollection what Coresta is?
A. Sure, I would be happy to.
Coresta is an international organization of scientists obviously from around the world that conducts research related to tobacco and cigarette manufacture.
There are scientists from major tobacco companies, from supplier companies like paper suppliers, filter suppliers.
There is also research institutes represented there, scientists from universities from around the world.
And the main function of Coresta is to provide a vehicle for sharing scientific information. So scientists will get up and present papers, discuss their research so that everyone knows what's going on.
The second main function for Coresta is to establish standardized test methods for the tobacco industry.
Q. Thank you. How long have you been a member of that organization, sir?
A. My company has been a member for I would say

at least thirty years.
Q. And how long have you actually participated in Coresta meetings or functions?
A. I would say since 1983.
Q. Have you ever been an officer in Coresta?
A. Yes. I'm currently vice president of the board of directors of Coresta.
I have been vice president of the scientific commission, which is the organization within Coresta that directs the scientific work.
I've been president of the technology group, which is one of the areas of Coresta, and it is focused on technology development and some test method development.
Q. Can you share with the jury how many meetings you have attended since 1983?
A. I'm not sure I can give an exact number.
I would say, if you are talking about all meetings, probably in the neighborhood of 45, 50.
Q. Now, how often do they meet, and do they meet regularly, once a quarter or so?
A. They do meet regularly, and there are different task forces that meet to actually conduct the scientific work. Those go on throughout the year.
Every fall, however, there is a large meeting where all members of Coresta come together to share results, to talk about the direction of Coresta and the scientific work. So in the fall there is a large meeting.
The board, which I sit on, meets twice a year in June and in January or February.

The scientific commission will have its own meetings twice a year, separate from that large meeting.
And as I said, the task forces -- and there

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are many task forces trying to develop standardized test methods and deal with scientific issues -- they meet very regularly throughout the year.

So there are many meetings.

Q. Is it fair to state, sir, that the other defendants in this case, Philip Morris, Lorillard, Brown & Williamson, are also members of Coresta?

A. They are members, yes.

Q. Is it fair to state that they probably have been members as long as Reynolds has been a member or maybe even longer?

A. Well, I'm not -- I don't remember the exact details of when each company joined and everything. But in general I would say that's generally true.

Q. Now, is Coresta -- I know you just told us, but is it mainly a scientific organization, or you would not classify it as such?

A. I wouldn't say mainly a scientific organization. It is definitely a scientific organization.

The purpose of Coresta is, as I have said, to share scientific information from scientists around the world and to develop standardized test methods. The only thing Coresta does is science.

Q. Are lawyers members of Coresta?

A. No, they are not. Companies are members of Coresta. Lawyers do not participate in Coresta.

Q. And sir, for the benefit of the ladies and

gentlemen of the jury, what is a monograph?

A. Well, a monograph is generally a report that describes a particular topic or goes into issues on a particular topic.

Q. And have you reviewed, read monographs over your years as a Ph.D. chemist?

A. Well, it's a very general question. Certainly I have looked at many monographs or discussions of various issues in different forms, whether it's called a monograph or not.

Q. And from a scientific point of view, Dr. Townsend, do scientists stop writing about subjects because what they publish today may become dated in the future?

A. Well, I'm not sure I entirely understand your question.

Q. Let me see if I can clarify it for you.

Let's say that I'm a scientist and I'm going to publish some results on health and smoking, but that I believe that a year from now maybe things will have changed.

Does that make a scientist kind of say, well, I'm never going to publish my studies as of today, assuming that my studies are concluded?

A. Of course not. Scientists publish the results of their work, and as time goes by, the state of knowledge of science improves. Things move on and people -- and we as scientists learn more as we go along.

Q. So you do agree, do you not, sir, that if scientists were to stop writing monographs or do research because whatever research they are doing

they are afraid would become dated with time, that

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the scientific history would be nothing but a blank slate; correct?
A. In general I agree with that. Science does become dated, there is no question about that, because we do learn more as we go along, as we conduct additional experiments.
Scientists need to write, publish, present the results of their research to further the advancement of scientific knowledge.
Q. Is smoke chemistry important in the area of cigarette design?
A. Yes, it's very important.
Q. And if I am a cigarette designer and I want to be the best cigarette designer in the industry, and that is an industry that, for instance, you claim is fairly competitive, is it fair to state that I would want to read and understand as much of the science as is humanly possible for me to absorb?
A. About smoke chemistry?
Q. About smoke chemistry or any other area dealing with cigarette design.
A. I agree with that. I think to be an effective cigarette designer, one really needs to know what's known about how cigarettes perform when they burn, the physics and chemistry in a burning cigarette, they need to know a lot about smoke chemistry, and a number of other things as well.
Q. And sir, you were a member of Coresta, were you not, in February of 1993?
A. My company was a member, and I certainly represented my company in various capacities.

Q. And I'm not trying to suggest necessarily you may have been the only one, but that was going to be my next question, that your company, of course, was a member back in February of 1993; correct?
A. That's right.
Q. All right. And the defendants in this case, the other defendants, Philip Morris, Lorillard, Brown & Williamson, were also members at that time; is that not correct, sir?
A. I'm certain about Brown & Williamson and Philip Morris.
Lorillard currently belongs. I'm not sure whether they were exactly a member in 1993.
Q. Fair enough.
MR. BENCOMO:
Carl, would you be kind enough to pull out Exhibit 2333, and please put it up on the screens of the witness, the Court, and opposing counsel.
MR. SCHNEIDER:
Objection. May we approach?
(At sidebar:)
MR. BENCOMO:
May we take that off the screen while we have this?
MR. SCHNEIDER:
Your Honor, Exhibit 2333 is a document which we claimed privilege with respect to. Special Master Gianna overruled that claim, and Your Honor sustained Special Master Gianna's finding

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of no privilege.

However, we did not make objections as to relevance and 403. Those were preserved to such time as we were going to introduce the documents.

This is the first time since the document has come up. With respect to Exhibit 2333, we object to it on the grounds of a lack of relevance and a 403 issue.

Basically this is a memorandum by Mr. Wells written in 1993 talking about -- it states in the last paragraph: As a general observation, it would be advantageous if all documents intended for circulation to Coresta were reviewed in advance by legal counsel.

Well, there is no showing that this has any relevance in any shape whatsoever to Dr. Townsend's qualifications, number one, and no showing it has any relevance to any of the claims in this case.

This is a document written in 1993 about materials going to Coresta. It has no connection to what's taking place here in New Orleans whatsoever, much less to a case that was initiated in 1994.

So we would object to it on relevance grounds and prejudice grounds. They keep throwing rabbits into the record for us to chase down and cross-examine.

THE COURT:

Do you have anything, Mr. Long?

MR. LONG:

Yes. Number one, I really can't see what this has to do with qualifications. Again, it goes to the merits of the case if it goes to any issue.

Secondly, on 403 grounds, if this thing does come into evidence, given the prior references to which we objected vigorously to Shook Hardy & Bacon in Kansas City, that the law firm name Shook Hardy be removed in Kansas City.

It's really not relevant to this as long as they know it's legal counsel if it comes in.

Because the more they start arguing now that they connected up Kansas City, Shook Hardy & Bacon are lawyers in this courtroom, the more they are allowed to bring up things that should precluded by 403, the closer we get to mistrial.

It's the stage they set with witnesses, are now they are going into this topic with this witness.

THE COURT:

What is the relevance at this point to his qualifications or nonqualifications as an expert?

MR. BENCOMO:

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Yes, two specific points. That as an expert, this gentlemen has been tendered as an expert in smoke chemistry, and that's why I asked him whether or not it

was --

THE COURT:

Cigarette composition, cigarette performance --

MR. BENCOMO:

That's all smoke chemistry.

THE COURT:

-- chemistry and smoke chemistry.

MR. BENCOMO:

Let me finish my argument.

THE COURT:

What is this document? Why is it relevant to his qualifications?

MR. BENCOMO:

Because I asked him whether or not if I wanted to be the best smoke designer in the world, that I would want to read all about it.

This document shows that Chapters 14 and 15 on smoke chemistry and tobacco and health issues were omitted, and he did not have that information available in the design of cigarettes. That's one reason why it's relevant. It's totally relevant.

The other reason is that Mr. Belasic, Mr. Belasic brought out, he opened the door to the fact, he said, well, lawyers don't get involved, you know, in meetings and telling you what to do and removing things and all that. He also said that lawyers, lawyers are not members of

Coresta.

Here are lawyers doing what scientists are supposed to do.

So there are many, many reasons and grounds why this objection should be overruled.

MR. LOUIS GERTLER:

If I can just add one thing, Your Honor?

THE COURT:

Please.

MR. LOUIS GERTLER:

Mr. Belasic asked Dr. Townsend extensively about Coresta during his qualifications, so obviously Mr. Belasic thought it was relevant to his qualifications.

MR. LONG:

May I respond, Your Honor?

This document does not -- number one, there still has been no hook-up to qualifications. There is no connection between this witness and this document.

Number two, Mr. Bencomo said this document proves Chapter 14 and 15 were

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omitted. I'm not familiar with the document --
MR. BENCOMO:
Can't I ask it?
MR. LONG:
May I finish?
MR. BENCOMO:

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Yes.
MR. LONG:
But the document itself says we recommend, so there is no showing --
MR. BENCOMO:
He only established --
THE COURT:
Who is Wells?
MR. LOUIS GERTLER:
Wells is in-house counsel for Brown & Williamson. I think he's second in command of in-house counsel.
MR. SCHNEIDER:
In 1993 he was in-house counsel at B&W. He's retired currently, but that's what he was in 1993.
MR. BENCOMO:
Judge, if I may, he also stated that he had access to all of these Coresta documents as vice president, the whole thing.
THE COURT:
All right. I don't think it's relevant to qualifications. I'm going to sustain the relevance objection at this phase of his cross.
It doesn't mean you can't do it on the merits.
MR. BENCOMO:
Okay, very well. That's fine.
I will tell you what, I will withdraw this document.

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MR. LONG:
You haven't offered it yet.
MR. BENCOMO:
That's fine.
THE COURT:
Just go on to something else. For the record, the objection is sustained on relevance grounds.
(In open court:)

BY MR. BENCOMO:
Q. Sir, if I may follow up with some questions on the issue of the design of cigarettes. I believe you told me in response to a previous question that the issue or the area of smoke chemistry is important to someone such as yourself, as chief of design, if you will; is that not correct?
A. Yes. I think I have said smoke chemistry is very important in the area of cigarette design.
Q. And what about tobacco and health issues, are those important from the area of cigarette design?
A. Tobacco or smoking and health and tobacco and health, as you say, issues are extremely important

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in cigarette design because those issues and hypotheses give us direction to take as cigarette designers to try to reduce the risks.
Q. And sir, do you believe as a scientist that lawyers should be telling scientists to delete any articles or any mention of smoke chemistry in the area of cigarette design?
A. I don't think lawyers should be involved in planning, deciding what kind of research is conducted, nor necessarily in how to interpret the

results.
I think lawyers sometimes are involved in document preparation because of proprietary issues or regulatory issues or others. But certainly I think lawyers should not be involved in deciding what kind of science is done or not done.
Q. You agree that that's just not the way that science should operate. Is that not correct?
A. I agree with that, yes.
Q. And what do you think about scientists who delete paragraphs or chapters of articles because a lawyer instructed them to do it?
A. Well, again, I think it depends on the circumstances.
I think there are reasons for lawyers to look at documents, particularly for regulatory issues, for litigation issues and others. So --
Q. Well, let's break that down, if I may. You said for regulatory issues.
A. Uh-huh.
Q. Does Coresta, is that a United States type of organization or is it like a private organization? In other words, it's not the FTC; correct?
A. It is a structured company in France, so it is a stand-alone company that reports to the government of France.
Q. What about to the government of the United States, any requirement that it report to the government of the United States?
A. That Coresta report?
Q. Yes, sir.
A. No. Coresta publishes its scientific

information available to all members of Coresta.
Q. And sir, I just want to make sure that I'm correct on this. And forgive me because I know you told us and the jury about some of your titles with Coresta, but you said you currently are the vice president on the board?
A. Yes.
Q. You were the vice president of scientific organizations?
A. Scientific commission which directs the scientific work of Coresta.
Q. You were the president of the technology group?
A. Yes.
Q. And in those capacities or in that capacity, whenever it was, you certainly had access to, for instance, any monographs that may have been published by any of your members who participated in Coresta; isn't that correct?

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A. No, I don't think that's exactly correct. I certainly had access and have been through all documents that become official Coresta documents.

The way Coresta works is the member companies conduct research, sometimes in task forces -- mainly in task forces, and then provides information through those task forces to Coresta.

Coresta then will decide, okay, this, for example, this test method is now complete, we are going to publish this, we will send it to ISO, the International Standards Organization, for adoption.

And all those official Coresta documents I certainly have seen. I wouldn't begin to say I have

seen all the member company documents.

Q. If a monograph were to be prepublished, if you will, and that monograph had 15 chapters, and two chapters were deleted, I'm assuming then that what you are telling this jury is that you would only be familiar with 13 of the chapters because the other two would have been deleted for whatever reason; is that correct?

MR. BELASIC:

Objection. Beyond qualifications.

THE COURT:

Did you say beyond qualifications?

MR. BELASIC:

Yes.

THE COURT:

Sustained.

MR. BENCOMO:

I will go on to something else, Judge.

BY MR. BENCOMO:

Q. Sir, one last area that I would like to go over with you very quickly and briefly. I believe, just to refresh the jury's recollection, that you testified yesterday you started smoking at age 27; correct?

A. I believe that's right, yes.

Q. And you are aware, are you not, sir, that 90 percent of all smokers start smoking by the time they are 18 years of age; is that not correct?

MR. BELASIC:

Same objection.

MR. LONG:

Objection, beyond qualifications.

THE COURT:

Sustained.

MR. BENCOMO:

Your Honor, may we approach?

THE COURT:

Yes.

(At sidebar:)

MR. BENCOMO:

I just wanted the Court to reconsider that issue, because they segment their market as cigarette designers for certain ages, and I think that I'm entitled to go into that in this man's qualifications.

He's a designer. He's designing cigarettes not just for 50-year-olds, but

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also for 18-year-olds.
THE COURT:
That might be fine on cross of his direct testimony, but this is qualifications as an expert.
And whether or not he knows the beginning age for smokers has nothing to do with his qualifications as tendered.
It may have had something to do with his qualifications if he's a marketing person or if he's something else, but he's a chemist and he's testified he knows nothing about marketing and he doesn't deal with marketing. You got that out of him this morning.
I decline to change my ruling.

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MR. BENCOMO:
That's fine. I just wanted to preseerve the right when I go into the documents in the case in chief that have been there, that he's looked at, whether he's a marketing expert or not, to go into that issues.
THE COURT:
I'm not precluding anything on your cross of his direct testimony. But this is cross on qualifications, and I'm limiting you to what's relevant to his qualifications.
MR. BENCOMO:
I only have a few more questions. Mr. Belasic asked him about -- he's the one who brought up the fact, hey, this is a guy from North Carolina, he said I started smoking at age 27, and I want to be able to ask him --
THE COURT:
And it wasn't objected to, was it?
MR. BENCOMO:
I did object.
THE COURT:
Did you?
MR. BENCOMO:
Yes, on relevancy. So I'm going to go into the fact --
THE COURT:
Finish your cross on his qualifications. I'm not going to change

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my ruling.
(In open court:)
BY MR. BENCOMO:
Q. Sir, on the issue of your starting to smoke at age 27, you started to smoke long past your teenage years; correct?
A. Yes.
Q. And you made that decision as someone with a Ph.D. and significant education; correct?
A. Yes, I did.
Q. And you are on record, are you not, as testifying that cigarette smoking is inherently risky; is that not correct?

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A. Absolutely.
Q. And you agree, do you not, that adults and not children need to make the kind of risk decision that involves whether to smoke or not to smoke; is that correct?
MR. LONG:
Objection. Beyond qualifications, Your Honor.
THE COURT:
Overruled. Answer the question.
A. It's my opinion that only adults should make the decision to smoke.
MR. BENCOMO:
Thank you, sir. I don't have any other questions for right now. I tender the witness back, Your Honor.
Thank you very much, Dr. Townsend. I appreciate it.
THE COURT:

Any redirect on qualifications?
MR. BELASIC:
Briefly, Your Honor.
Good morning, everyone.
-- -- --
DIRECT EXAMINATION (Continued)
BY MR. BELASIC:
Q. Dr. Townsend, let's just briefly review a few of the things that Mr. Bencomo talked to you about yesterday.
Do you remember that he asked you about Reynolds not having a full-time epidemiologist, a person who does epidemiology studies on the R&D staff?
A. Yes, I remember that.
Q. You said that epidemiology is basically statistics?
A. I think it is. It is a branch of statistics, yes.
Q. And it's the statistics that can show a mathematical or statistical relationship between smoking and rate of disease?
A. Yes.
Q. Do you have statisticians on your R&D staff?
A. Certainly. We have a number of them.
Q. Do you have people whose job or at least part of their job is to review and evaluate the scientific evidence on epidemiology of smoking?
A. Yes, we do.
Q. And do you base in part your cigarette design decisions at Reynolds on that epidemiology?
A. In great part, yes.

Q. And are you familiar with the outside-the-public-health-community studies, these epidemiological studies?
A. I'm personally familiar with many of them, yes.
Q. The same questions about biologists. Do you remember that Mr. Bencomo pointed out that you are a chemist, not a biologist?
A. Yes.
Q. Do you have biologists on your staff at R. J.

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Reynolds?
A. Yes, quite a few.
Q. And do you have biologists who look at things like whether chemical components of smoke could be carcinogenic?
A. Yes, we do.
Q. And do you rely on that research?
A. I rely on that research and I rely on those staff.
Q. Do you also rely on the external research, the research that the public health community does about whether chemical components in smoke could cause cancer?
A. I do.
Q. Are you familiar with that research?
A. I'm familiar with much of it. And we look to those reports, those hypotheses of what in smoke may be responsible for the risks of smoking. And that does help guide our cigarette design work.
Q. Okay. So again it's related to what you do as an expert on cigarette design?
A. That's right.

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Q. Mr. Bencomo talked about your salary and pointed out that you make more than the average person. Is your salary dependent on your litigation work when you come and testify?
A. No, it's not.
Q. Do you get a bonus for testifying?
A. No, absolutely not.
Q. Is your compensation effected in any way on whether you do well or do poorly?
A. No.
Q. Does testifying in these trials help you in your job performance?
A. Not really.
Q. Does it have any effect on your job performance?
A. No.
Q. He also asked you about whether you got a bonus for making a safer cigarette. I believe you told him that if you do get a bonus, it's based on the financial performance of the company?
A. Yes. Both the financial performance and the share of market performance of our brands, which of course relates to the financial performance.
Q. Is it unusual for someone that works for a business to have a bonus determined by whether the company does well financially?
A. No, that's very common.
Q. Now, if you, as part of your cigarette design work, developed a successful cigarette that significantly reduced the risks of smoking that people bought, what effect would that have on Reynolds' bottom line?

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MR. BENCOMO:
Objection, Your Honor. Can we approach?
THE COURT:
You may approach.
(At sidebar:)
MR. BENCOMO:

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Your Honor, I established I think to a great extent this man is not an economist, he's not in marketing, he's not in profit centers in this company. He is a chemist.

And that's why -- let me tell you something. This guy has been shut down by every judge because he goes way, way far afield on his regular testimony, and that's what he's starting to do.

And that's the reason why I was so thorough in my examination of him on those issues. He is a chemist, period, as the defendants have pointed out when they objected to my line of questioning.

MR. BELASIC:

Number one, it's absolutely untrue that this witness has been shut down by every judge. Quite the contrary.

Mr. Bencomo argued yesterday that his bonus has nothing to do with safer cigarettes. I'm simply going to point out, as he well knows, that if they make a safer cigarette that's successful, he's going to make money, and that they have a

profit motive to make that safer cigarette.

He brought it up in qualifications.

MR. BENCOMO:

He can't talk about -- and that's another thing, Judge. You are not letting me go into how much money they spent on research. He can't say if we made a safer cigarette, we are going to sell this many more. That's not within his field of expertise.

THE COURT:

I'm going to overrule the objection and instruct him to answer if he's able to.

(In open court:)

THE COURT:

The objection is overruled. Answer the question if you are able to.

THE WITNESS:

Could you repeat the question, please?

MR. BELASIC:

Could you read it back, Your Honor?

THE COURT:

Now, if you as a part of your cigarette design work develop a successful cigarette that significantly reduced the risk of smoking and people bought it, what effect would that have on Reynolds' bottom line?

Answer the question if you are able

to.

THE WITNESS:

Thank you, Your Honor.

A. If R. J. Reynolds developed a safer

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cigarette, what I call reduced risk and it's clearly safer, and it does well in the market and people buy it, it will have a major effect on the sales for my company, I believe.

Because smokers understand that cigarettes are risky, they are concerned about the health risks of smoking, and a safer cigarette I think would be one that people buy as long as it's consumer acceptable.

MR. BENCOMO:

Your Honor, move to strike where from the time he started about what smokers understand.

THE COURT:

Mr. Bencomo, you are instructed to argue those issues at the bench.

MR. BENCOMO:

May we approach, Your Honor?

THE COURT:

I caution you to continue doing that.

Motion to strike denied. Next question, please.

BY MR. BELASIC:

Q. Simply put, do you at R. J. Reynolds have a profit motive to make a safer cigarette?

A. Absolutely.

I think there are two motives to make safer

cigarettes. Profits is clearly one. It's a very competitive industry, and if we are successful, we can beat our competition.

The second is it's the right thing to do.

Q. So the fact that you make a lot of money or Reynolds makes money, does that have anything to do with preventing Reynolds from trying to make a safer cigarette?

A. No.

Q. Mr. Bencomo also asked you some questions about things that were proprietary. When Reynolds is trying to design a safer cigarette, is Reynolds competing against the other defendants and other tobacco companies?

A. Yes, clearly. We compete -- this is a very competitive industry. We compete against our competitive companies in not only safer cigarette development, but in all cigarette development.

So cigarette design, product development, especially reduced risk or safer cigarette development, very proprietary, very confidential, really.

Q. What do you mean by proprietary when you say that?

A. It's competitively sensitive information. It's the kind of information we don't want our competition to know about, so we keep it internal.

Q. So when you are trying to work on a safer cigarette, you don't call up Philip Morris and say, Here, why don't you take it?

A. No.

Q. It's because you are competitors?

A. That's right.

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Q. Anything wrong with that?
A. Yes.
Q. Is there anything wrong with not sharing that information with your competitors?
A. Is there anything wrong with not sharing it?
Q. Yes.
A. No.
Q. When you were appointed by the U.S. and Canadian government agencies to those cigarette design expert committees, did anyone say that the fact you weren't an epidemiologist or biologist somehow made you not qualified?
A. No, they didn't.
Q. And based on your training and education as a Ph.D. chemist, your 25 years of experience working at Reynolds on cigarette design, your work on the government committees, do you have specialized knowledge that could assist this jury in evaluating the facts in this case?
A. Yes, I do.

MR. BELASIC:

Your Honor, we tender the witness as an expert in the fields designated.

THE COURT:

Objections to the tender?

MR. BENCOMO:

Not as designated, but certainly --

THE COURT:

Come up.

(At sidebar:)

MR. BENCOMO:

Yes, Your Honor. I did not have an objection to the tender as stated I believe yesterday by Mr. Belasic, but I do want to reurge for the record the fact that this particular witness starts talking about things that are way outside his field of expertise, and he does it question after question after question. I can show you the transcript from other cases where he's been shut down.

THE COURT:

I will instruct him at the first objection to keep his responses relevant to the questions asked and not volunteer information not called for by the question.

MR. BENCOMO:

Thank you, Your Honor, and to his field of expertise. In other words, he's not a market researcher, he's not a psychologist, those sorts of things.

THE COURT:

We will do it question by question.

MR. BENCOMO:

Thank you.

(In open court:)

THE COURT:

The Court will recognize the witness as an expert on cigarette design, as an expert on cigarette composition, as an expert on cigarette performance including

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performance as measured by the FTC test

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method, and as an expert on chemistry and smoke chemistry.

Proceed with your direct, please, Mr. Belasic.

MR. BELASIC:

Thank you, Your Honor.

BY MR. BELASIC:

Q. Dr. Townsend, just so you know, I'm going to ask you about three of the areas that we briefly mentioned yesterday.

First is Reynolds' work on general and selective reduction of chemical compounds in cigarette smoke. Are you prepared to give us both your expert opinion and your personal factual knowledge on that issue?

A. Yes, I am.

Q. The second issue I want to talk to you about is alternate cigarette designs, both what you have looked at and what some of the plaintiffs' witnesses have said in this trial. Are you prepared to give us your expert opinion and your personal factual knowledge on that issue?

A. Yes, I am.

Q. The third area that I want to talk about is cigarette design and the FTC test method. Again, are you prepared to give us your expert opinion and your personal factual knowledge on that issue?

A. Yes.

Q. Before we get into the first issue, this general and selective reduction of risk, I want to bring -- I want to cover a few of the issues that Mr. Bencomo mentioned yesterday.

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Now, you have told us about the many scientists that work at R. J. Reynolds under you. I assume then that there were also many scientists that worked there before you came over the years?

A. Well, certainly. I think over the years since the R&D department has been formed, there have been thousands of scientists at RJR.

Q. And are you free to talk with other scientists about ideas that come up in the course of your work?

A. Yes. Not only inside, but scientists outside the company, scientists at universities, research institutes. So we are free to talk to scientists.

Q. Are you free to write memos, write a document that expresses your opinion or describes what you are thinking at that given time?

A. Yes, very much so.

Q. Is every scientist at Reynolds given that freedom of thought?

A. Yes.

Q. Now, are there any words that a Reynolds scientist can't write in a memo, like addiction or cancer?

A. No, there are no words that are prevented from being used.

Q. Do you have some sort of thought police running around at Reynolds telling people what to say, what to think?

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A. No, we don't have thought police. We don't try to control what our people in the R&D Department say, think or write. We don't put our scientists' heads in a vice and try to force them into a certain

approach.
Q. And if scientists write something that you or other executives disagree with, do they lose their J-o-b, as Mr. Bencomo put it yesterday?
A. No, they don't.
Q. Now, do the memos that you have reviewed over the years, they contain a lot of ideas about cigarettes?
A. Well, certainly the memos that I have looked at contain many, many ideas about cigarettes, some of them good ideas, many of which have been pursued, and some of the ideas are not very good ideas. In fact, they are bad ideas. So there is the full range.
Q. Are you surprised that over the course of the fifty years of Reynolds R&D Department, that a scientist might have written something that you think is a dumb idea or a bad idea?
A. No, that doesn't surprise me at all.
Q. Now, the fact that some scientists write something in a document that gets put up on the screen here, does that mean that Reynolds acted on that document?
A. No, of course not.
Q. Does it mean that Reynolds based its policy on that?
A. Absolutely not.
Q. Does it mean that Reynolds did anything to do with that document at all?
A. Not necessarily at all.
Q. Do you agree that Reynolds ought to be judged on its actions and not what one scientist writes?

A. Absolutely. And I'm proud of RJR's actions over the years, and I believe that is what is to be judged.
Q. I'm going to ask you about RJR's actions.
We talked about freedom of thought. Do Reynolds scientists have the freedom to publish research?
A. Well, it's not only the freedom to publish, yes, but our scientists are encouraged to publish. We expect our scientists to publish good research that furthers scientific knowledge.
Q. Now, are there areas at Reynolds that you talk about that are proprietary and aren't published for that reason?
A. Yes, there are several areas. And one notable area is the area of cigarette design. Again, a very competitive industry, how we design cigarettes for risk reduction or for other purposes is extremely competitively sensitive.
Q. Have Reynolds scientists actually published their science out in the open in the publicly available scientific literature?
A. Yes. In fact, I would estimate today that we have published probably more than eight hundred manuscripts, and I think we have given -- we made

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presentations at scientific conferences like the Society of Toxicology and other places, Tobacco Chemists Research Conference, we have probably made over eight hundred scientific presentations over the years.
Q. And have Reynolds scientists published in these peer reviewed scientific journals that we have

heard about where independent scientists evaluate their work?
A. Yes, many times.
Q. You are familiar with the Surgeon General's reports.
A. Yes, I'm familiar with many of them.
Q. And you understand that the Surgeon General's reports had editors who reviewed the science to determine whether it is valid and should go into the report?
A. Yes, I understand that.
Q. All right. Under -- with knowledge of that screening process, are you aware of whether R. J. Reynolds' scientists have had their science published in the Surgeon General's reports?
A. Yes, on a number of occasions.
Q. And do you have a demonstrative exhibit that lists some of the scientists at Reynolds whose work has been cited by the Surgeon General?
A. Yes, I do.
Q. And would that help you in explaining this to the jury?
A. Yes.
MR. BELASIC:
Your Honor, could we call up DDA-616?
BY MR. BELASIC:
Q. Dr. Townsend, is that the exhibit you were talking about that contains a list of various R. J. Reynolds' scientists?
A. Yes, that is the exhibit.
MR. BELASIC:
Motive to publish, Your Honor.

THE COURT:
Objection?
MR. BENCOMO:
No objection to the exhibit as a demo.
I'm sorry, is it an exhibit?
MR. BELASIC:
No, it's a demonstrative exhibit, Mr. Bencomo.
MR. BENCOMO:
No objection.
THE COURT:
No objection to the demo as a demo?
MR. BENCOMO:
That's exactly right, Your Honor.
THE COURT:
All right. You may publish.
BY MR. BELASIC:
Q. Would you tell us what we have here, Dr. Townsend?
A. I would be happy to.
First of all, a number of R. J. Reynolds

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scientists have been quoted or referenced in various Surgeon General's reports, and over the years these are some of the scientists that have been referenced or pointed to by the Surgeon General, including Ralph Rowland, Dr. Alan Rodgman, Dr. Joe Schumacher, Dr. Don Roberts, Lawrence Cook, Wes Walker, Dr. Mike Dube and Dr. Charlie Green.

So I think much of the science that's been conducted at Reynolds has been acknowledged by the Surgeon General at various points.

MR. BELASIC:

You can put that down, thank you.

BY MR. BELASIC:

Q. Now, in addition to the research that you do in-house at R. J. Reynolds, does R. J. Reynolds fund outside research?

A. We do.

Q. Can you tell the jury what funding outside research is?

A. Well, in many cases, we may not have the capability or even the capacity to do certain types of experiments, or we may want independent verification of certain types of experiments conducted.

So we will go to research institutes or universities, for example, the University of Nebraska or Wake Forest University, Bowman Gray Medical School, and actually enter into an arrangement where that university or research institute will conduct certain types of research, we will pay the cost of it, we will pay the salary of the investigators and the cost of all the experiments.

And with that arrangement, that university or research institute gets to publish the results of those studies, no matter what they are.

Q. So you don't tell them, We are paying for it so we will decide whether to publish?

A. Absolutely not. That doesn't further science.

Paying for the research, supporting that research and letting that laboratory publish the

results, no matter what, is very important to the scientific process.

Q. Now, Mr. Bencomo asked you a whole bunch of questions about whether smoking is a risk factor to disease or it's a cause or both, and I want to explore exactly what your personal position is and what Reynolds' position is.

Now, you told us that even before you joined R. J. Reynolds, you believed smoking had significant risks to health?

A. Of course.

Q. And of course you believe that today?

A. Absolutely.

Q. What is your understanding of the nature of evidence about that risk?

A. Well, I think the main basis for the understanding of risks of smoking is epidemiology. And for many, many years beginning in the early '50s when the first good epidemiology evidence became

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available, it's been clear that, from the epidemiology, that cigarette smoking is a strong inherent risk for lung cancer and a number of other chronic diseases. The fundamental basis is the epidemiology.

There have been a lot of other experiments conducted, a lot of laboratory biology experiments that are consistent with cigarette smoking being a serious risk.

There have been other types of biology studies, animal studies, and even some human studies that are consistent with cigarette smoking being a strong risk.

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Q. Now, does Reynolds dispute or disagree with this epidemiology evidence that shows smokers have higher rates of disease?

A. Absolutely not. The epidemiology is strong. It's powerful. Reynolds does not dispute that epidemiology whatsoever.

Q. And you mentioned that in fact your cigarette design decisions are based in part on that epidemiology?

A. In part, yes.

Q. You mentioned some of the laboratory studies and the animal research. What do those studies show?

A. Well, again, the total sum of that is consistency with the idea that cigarette smoking is a strong inherent risk.

Many of those studies include cytotoxicity studies where smoke is exposed to cells and you see what the result is, or genotoxicity studies, or even DNA damage studies.

Animal studies may include skin painting studies where mice -- tar from cigarettes is applied to the backs of mice. Or even animal inhalation studies, mice or rats will inhale smoke and then their lungs will be examined to see what the result is.

Q. Now, has Reynolds conducted either in-house or funded outside laboratories to do that type of research?

A. Yes, we have done that research both in-house -- we have a large facility at Reynolds to conduct that, so we have done it in-house -- and we

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also funded outside experimentation in the same direction.

Q. Are you personally aware of that research?

A. Yes.

Q. Well, you mention these animal inhalation studies that Reynolds funded. How long has inhalation research with animals been going on?

A. Well, I think inhalation studies with cigarette smoke have been going on since way back in the '50s.

The interesting thing is that there is not an inhalation model with animals at this point for cigarette smoke. In other words, all the studies that have been done so far when animals inhale cigarette smoke, they do not develop lung tumors.

They do, however, develop a number of changes

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in their respiratory tract and in their lung, hyperplasia, metaplasia, that are thought to be associated with chronic disease.
Q. Is Reynolds doing any work on developing this animal model for inhaling smoke and seeing if it develops cancer?
A. We actually use one animal model in the laboratory now, and we are trying to develop a new model, a new type of animal, that will in fact produce tumors when they inhale smoke.
So we are trying to develop new biological or new animal models, actually.
Q. You mentioned earlier some of the DNA studies. Is Reynolds' Research & Development Department funding any DNA research that relates to smoking and cancer?

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A. Yes. We conduct research internally on DNA damage or DNA modifications as a result of cigarette smoke exposure, and we have some experts in-house.
We have talked with a number of experts outside of Reynolds, and we have had some research conducted outside of Reynolds.
Q. Now, as Mr. Bencomo pointed out, you are not a doctor. You are a Ph.D. chemist. But based on that and your knowledge of this information, this evidence, how do you describe the relationship between smoking and cancer?
A. My personal opinion?
Q. Yes.
A. It's clear --
MR. BENCOMO:
Your Honor, may we approach?
Objection.
THE COURT:
You may approach.
(At sidebar:)
MR. BENCOMO:
Your Honor, this is exactly what I'm talking about. This gentleman is a chemist and he cannot now start talking about something that is not within his field of expertise.
MR. BELASIC:
Mr. Bencomo, as you remember, cross-examined him at length on his personal opinion on causation and on Reynolds' corporate position, and criticized him in front of the jury for it.

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I'm entitled to find out in greater detail what his basis for that is.
THE COURT:
What his basis for what is?
MR. BELASIC:
For his position on causation. He cross-examined him at length on this issue.
THE COURT:
I understand. But I think it's outside of his area of expertise.
He's not a medical witness. He's a chemist. He has a Ph.D. in chemistry, and

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you have got him qualified as tendered.
I'm going to limit him to expert testimony in those fields and factual testimony that he knows of his own knowledge from history.
MR. BELASIC:
But, Your Honor, may I respond to what Mr. Bencomo asked him about, the company position? He has personal knowledge of both of those issues.
THE COURT:
If he knows what the company's position is, but that's not what you just asked him. You are asking for his personal opinion on the causal relationship between smoking and cancer, and that's the objection I'm sustaining. Go on to something else.
MR. BENCOMO:

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Thank you, Your Honor.
(In open court:)
THE COURT:
Sustained, don't answer that question.
Next question, please?

BY MR. BELASIC:
Q. Does Reynolds have a company or corporate position on whether smoking causes lung cancer?
A. Yes.
Q. And what is that position?
A. Reynolds' position based on the science is that cigarette smoking is a strong inherent risk factor for lung cancer, emphysema, cardiovascular diseases and other chronic diseases, and that cigarette smoking may contribute to causing those diseases in some individuals.
Q. And is that position written on their company web site that anybody can look up?
A. Yes.
Q. So the web site says both risk and cause --
A. Yes.
Q. -- in talking about this relationship?
A. Yes, it does.
MR. BENCOMO:
Objection, Your Honor. Misstates the witness' testimony.
THE COURT:
Overruled. Answer the question, please.
Well, the question has been answered. Did you complete your answer?

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THE WITNESS:
Yes, I did, Your Honor.
THE COURT:
Next question, please?

BY MR. BELASIC:
Q. Does the web site refer to the Surgeon General?
A. It does.
Q. In what way?
A. It points readers to the Surgeon General for

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a variety of information on the risks of smoking, on the issue of causation as well.
Q. So R. J. Reynolds' web site doesn't say the Surgeon General is wrong then, does it?
A. No, it doesn't.
Q. It tells people to go to the Surgeon General and get that information?
A. That's correct.
Q. Now, did you personally participate in the development of the statements that are on Reynolds' web site?
A. I was involved in a number of those statements, yes.
Q. Can you tell the jury from your own knowledge how Reynolds came to that position that they put on their web site?
A. On causation?
Q. Yes.
A. Yes, I would be happy to.
Again, the whole issue of smoking and health and causation is a scientific issue. And so company management looks to R&D, looked to R&D to develop a

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basis for the company position.
Our scientists at the Research & Development Department developed a consensus, which is what is on the web site, and the company then applied that to the web site.
So the company has looked at the scientific merits of that position, tried to determine what the most accurate scientific position is, and then published that on the web site.
Q. Do you have personal knowledge of why Reynolds uses the terms, both terms, risk and cause on its web site?
A. Well, yes, I think I do.
Q. Could you tell the jury why Reynolds used both of those terms?
MR. BENCOMO:
Your Honor, may we approach, please?
THE COURT:
You may approach.
(At sidebar:)
MR. BENCOMO:
Your Honor, my objection is that he is very disingenuously suggesting that they say risk and cause. His testimony was that they say on the web site may cause.
So he's mischaracterizing the witness' testimony and what's on the web site. He should say: Did you say risk and may cause, not cause. That's a big difference.
THE COURT:

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Well, that's appropriate for cross-examination. Your objection is overruled.
MR. BELASIC:
Thank you, Your Honor.
(In open court:)
THE COURT:
Overruled. Answer the question, if

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you are able to.
And the question is: Could you tell the jury why Reynolds used both of those terms?
THE WITNESS: Thank you, Your Honor.
A. Yes, both of those terms are used because there are differences.
Risk is related to the epidemiology, that cigarette smokers as a group have much higher incidence of chronic disease including lung cancer, emphysema and other diseases.
Cause is a much more -- is a much more difficult scientific term to define, and in rigorous terms requires that you have not only the available scientific information that we have today, but that you have an animal model and that you have -- that you understand the mechanism of why cigarette smoke causes those diseases.
And the scientific conclusion of Reynolds at this point is that cigarette smoking may contribute to causing for some individuals particularly, and that's different than risk which is absolutely not disputed at all.
Q. Now, were there debates within Reynolds scientists as to what position to put on the web

site, or did everyone just march to the same drum?
A. No. I would say there were very significant debates within Reynolds.
Q. Based on your personal knowledge, did lawyers participate in drafting that web site position on smoking and cancer?
A. No, lawyers did not participate. This is a scientific question.
Q. Now, you told us about your opinion and the company position. Is there an operating premise at the Research & Development Department on cigarette design that relates to this position?
A. There is.
Q. And what is that operating premise?
A. For cigarette designers at Reynolds to reduce the risks of smoking, you must assume that cigarette smoking does in fact cause lung cancer and other chronic diseases. You assume that it does, and then you design cigarettes to reduce the risk.
Q. So when you design a cigarette, you don't say, Well, it may cause, we won't do any work on that issue?
A. Absolutely not.
Q. Now, is every decision that's based on cigarette design, does it fall under that premise, that you assume smoking causes disease when you design a cigarette?
A. Yes.
Q. Can you provide the jury with any examples of what you mean by assuming that the claims that smoking causes this disease are true when you make that assumption?

A. Sure. Well, the scientists, for example, by assuming that cigarette smoking causes, say, lung cancer, then goes out and looks at the public health community and the other scientific information that

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speaks to what hypotheses are thought about why cigarette smoking may be related to lung cancer, determines those compounds in smoke, for example, that are thought to be likely involved, for example, polycyclic aromatic hydrocarbons, and then the cigarette designer will try to determine how to build a cigarette that has very low levels of polycyclic aromatic hydrocarbons.

Q. For how long has Reynolds had this policy that the cigarette designers have to assume that smoking does cause cancer and other diseases?

A. I would say since the '50s.

Q. Since as long as you had a Research & Development Department?

A. Yes, basically.

Q. I want to move -- start moving into that first of the areas that we talked about, this general and selective risk reduction.

Before I do, have you reviewed what some of the plaintiffs' witnesses have said about your field of cigarette design in this trial?

A. I have reviewed some of it, yes.

Q. Have you looked at what Dr. Henningfield said in this case?

A. I have looked at some of what he said, yes.

Q. Did you read what Dr. Farone said about cigarette design in this case?

A. Yes.

Q. And are you prepared to respond to some of the allegations that Dr. Henningfield and Dr. Farone made in front of this jury?

A. Yes, I am.

Q. Okay. Dr. Townsend, the plaintiffs have talked about nicotine manipulation in this case. Are you prepared to address that area?

A. I certainly am.

Q. They talked about reconstituted tobacco. Are you prepared to tell the jury what you know about that?

A. Yes.

Q. They talked about something called an overwrap that connects the cigarette rod to the filter. Are you prepared to tell the jury about that?

A. Sure.

Q. Are you familiar with filter ventilation through your 25 years of experience?

A. Yes, I am.

Q. Plaintiffs have also made claims about the particle size of smoke. Are you prepared to address that issue?

A. Yes, I am.

Q. Plaintiffs have made claims about ammonia and the pH of smoke. Are you familiar with that issue?

A. I'm very familiar with it.

Q. Are you prepared to tell the jury your views on that issue?

A. Sure.

Q. They have also made claims about certain chemicals that are actually in the smoke. And you

are prepared to address those claims?

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A. Yes, I am.
Q. As we discuss general and selective reduction, let's talk first about what the cigarette is.
Now, are cigarettes from the 1950s, fifty years ago, the same as cigarettes today?
A. Well, I think they look similar, but they are not the same at all.
The blends are very different. We use different types of processed tobaccos in the blend. We use very different types of cigarette paper.
The whole technology of air dilution is -- has been developed over that period of time and wasn't present in the '50s.
More efficient and highly engineered filters are present in today's cigarettes, and there are other design factors as well.
Q. Did those changes just come about by accident?
A. No. It came through research and development, for example, that work that was done at Reynolds and our competitors' companies.
Q. Would you tell us briefly, why were those changes made in the design of cigarettes?
A. Those changes were made in large part because cigarette smoking is a strong risk for disease, and those changes were made to reduce the overall yield to the smoker of tar and nicotine, carbon monoxide and components within the tar.
Q. Now, there are cigarette companies in the United States that aren't defendants in this

lawsuit; is that right?
A. That's right.
Q. And are there cigarette companies throughout the world?
A. Yes.
Q. And as part of your work in the R&D Department, do you keep up with design developments by those other companies in Europe, say, or Japan?
A. We do. We try to keep on top of what's going on internationally.
Q. Why do you do that?
A. Because it's a very competitive industry, and we want to make sure if another company has discovered something that's an important design factor, we want to understand it and know how it works and be ahead of the curve.
Q. Let me show you an exhibit that was used by one of plaintiffs' witnesses, Dr. Farone. It's WF-1.
MR. BELASIC:
And I understand the plaintiffs have been kind enough to agree to call it up for us. If we could put up WF-1 on the screen?
BY MR. BELASIC:
Q. Doctor, do you recognize the drawing that appears in front of you?
A. I do. I saw this several days ago. And actually this is a hand drawing that I made and included in my cigarette design course at R. J. Reynolds for scientists at Reynolds.

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Q. And what is it a drawing of?

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A. It's a drawing of a cigarette, and it essentially shows the major components of the modern cigarette.
Q. Let me get this straight. The drawing of a cigarette that plaintiffs' experts showed is actually something you drew and something you did in your work?
A. Yes. It was lifted out of my cigarette design course handbook.
Q. Okay.

MR. BELASIC:
Your Honor, may we publish?
MR. BENCOMO:
No objection.
THE COURT:
You may publish.

BY MR. BELASIC:
Q. Now, Doctor, is this drawing an accurate depiction of a modern cigarette?
A. It's simplistic, but it is a description of the major elements of the cigarette.
Q. And is there anything you would like to share with the jury based on your drawing?
A. Well, I think in general this shows the tobacco rod, which is the blend that's been carefully, carefully designed.

The blend is rolled in cigarette paper, and it's attached to the filter by virtue of this tipping paper. You will notice the tipping paper that's cut away.

And the tipping paper overlaps onto the tobacco rod, and is glued to the tobacco rod by

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three or four millimeters, three to five millimeters roughly.

The tipping paper also has perforations placed in it for air dilution or filter ventilation.

There is an inside paper that holds together the filter bundle, the filter plug, and that's the bundle of fibers that are the filtration medium.

The plug wrap is a lot like teabag paper, it's very porous, it's very thin, you can see through it, and that's chosen so that air can go through it very easily.

MR. BELASIC:
All right, we can take that down.
Thank you, Carl.

BY MR. BELASIC:
Q. Let's talk briefly about smoke. What is cigarette smoke?
A. Well, cigarette smoke is actually classified as an aerosol.

An aerosol is particles suspended in a gas phase medium. So if one drives down a dusty Arizona road and there is a cloud of smoke, that's an aerosol because you have got solid particles suspended in gas, in a gas phase medium.

In the case of cigarette smoke, the particles are primarily liquid in nature. They are liquid particles that are suspended in a gas phase medium.

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Now, these particles are so small that you can't really see them directly. You can't see them per se, but you do see a cloud of smoke because light is actually scattered in different ways by

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these particles.
Q. So there is actually some solid particles in the smoke? It's not just all gas or vapor?
A. There is gas phase, which also can be called a vapor phase, but then there are liquid particles suspended in this gas.
Now, inside the liquid particle you can have very trace quantities of a solid material, but it's primarily liquid in nature.
Q. Now, have you heard cigarette smoke referred to as a complex chemical mixture?
A. I think I have said that many times. Cigarette smoke is a complex chemical mixture.
Q. What do you mean by that?
A. Cigarette smoke, if one looks in the gas phase, there are many, many compounds that are present in that gas phase.
If you look in the particles, these little liquid droplets, there are many, many compounds that are in those droplets.
And in fact, if you look at what's known scientifically today about cigarette smoke, we know of more than five thousand compounds that are present in cigarette smoke. So it's very complex.
Q. We will look at a chart of that smoke when we get back from our break.
A. Okay.
THE COURT:
We will take our midmorning recess at this point until 11:00 by the wall clock.
(In open court without a jury present:)

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THE COURT:
Let the record reflect the jury has left the courtroom. Anything for the record by plaintiffs counsel?
MR. BRUNO:
Yes, Judge. If you don't mind, Raul?
With regard to some exhibits that you asked Doc and I to get together on, and Doc redacted it. We have no objection to Scott Exhibit No. 2871.02 as redacted by the defendants.
THE COURT:
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MR. BRUNO:
2871.02.
We have no objection to Scott Exhibit No. 806.01 as redacted by the defendants.
We have no objection to Scott Exhibit No. 1961.01 as redacted by the defendants.
We have no objection to Scott Exhibit No. 4788.01 as redacted by the defendants.
We have no objection to Scott Exhibit No. 4741.01 as redacted by the defendants.

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We have no objection to Scott Exhibit No. 1882.01 as redacted by the defendants.
And Doc, these are okay now without redaction?
MR. SCHNEIDER:
We will just admit them in their entirety.

MR. BRUNO:
And the defendants and plaintiffs have agreed to the introduction of GK-100254 --
THE COURT:
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MR. BRUNO:
I'm sorry, Judge, 100254 and GK-000487.
These are learned treatises, and there is no objection to the admission as offered by the defendants.
And I will have Doc tell you that to be true. And we will just ask the defendants to supply Regina with the appropriate redacted versions for inclusion in the group of documents.
THE COURT:
Mr. Schneider, do you agree with what Mr. Bruno has just said?
MR. SCHNEIDER:
Yes, with some notes, and these are the notes.
With respect to the first set of documents that he mentioned that he had no objection to the redacted versions, those documents were not identified specifically with Dr. Rau by number. We objected to them being used at all. If they were going to be used or we were going to admit them, it would only be these sections. And with that understanding I redacted

these to reflect the sections that were at issue.
So if Your Honor is going to let them in, only those sections would go in, the ones that Mr. Bruno mentioned.
With respect to the articles, GK-000487 and GK-100254, my understanding is those are going in as learned treatises and be subject to whatever rules affect learned treatises in terms of what goes back to the jury.
MR. BRUNO:
That's correct.
MR. SCHNEIDER:
Those are the notes, Your Honor.
THE COURT:
Thank you.
MR. BRUNO:
And there are other exhibits that we offer, Judge, and we will have to have a time to argue those, apparently.
THE COURT:

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Say that again.
MR. BRUNO:
That is only a part of the total set. We will need to have an opportunity for you to rule or argue those, whatever your pleasure.
THE COURT:
Do you need an opportunity to confer about the others or have you conferred unsuccessfully?

MR. BRUNO:
We conferred unsuccessfully.
MR. SCHNEIDER:
The other documents, Your Honor, we mentioned on the record I think on Thursday, May 1st, and there were nine others, I believe. And our objection is basically that they are hearsay and not identified or proffered to the witness at all, not used in the examination, shouldn't just be coming in wholesale.
We had an objection to them in their entirety.
THE COURT:
I will review the transcript of May 1 and the examination of the witness when Mr. Bruno mentioned those, and I will rule on them.
MR. BRUNO:
Thank you, Your Honor.
MR. SCHNEIDER:
Finally, I will supply a copy of the redacted version to Regina.
THE COURT:
Anything else by plaintiffs counsel?
MR. RUSS HERMAN:
Just one short inquiry, Your Honor.
Our last day before the break is May 14th. My inquiry is whether Your Honor schedules a full day to 4:00 on that day, or will the length of that day's testimony be less than a full day?

THE COURT:
I don't intend to recess any earlier than usual on May 14th.
MR. RUSS HERMAN:
And I'm correct that our first day back will be June the 4th; is that correct, Your Honor?
THE COURT:
Yes. That's a little revision, but that is accurate.
MR. RUSS HERMAN:
Thank you.
THE COURT:
Anything else?
Defense counsel, anything for the record?
MR. WITTMANN:
No, Your Honor.
MR. SCHNEIDER:

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No, Your Honor.
THE COURT:
We will recess until eleven.
(A recess is taken at 10:49 a.m.)
-- -- --
(In open court with a jury present at 11:03 a.m.:)
THE COURT:
Juror Michelle Thomas has gotten a phone call that her home alarm system has sounded and that a window was broken in her house, so I have sent her home to check on the status of it.

So we are going to take an early lunch today until 12:30. I will discharge you at least until that time.
(In open court without a jury present:)
THE COURT:
I suppose nothing else for the record?
We will recess until 12:30.
(Whereupon, the hearing adjourns at 11:07 a.m.)

REPORTER'S CERTIFICATE

I, NICHOLAS A. MARRONE, CCR, Registered Merit Reporter, do hereby certify that the foregoing proceedings were reported by me in shorthand and transcribed under my personal direction and supervision, and is a true and correct transcript, to the best of my ability and understanding.
That I am not of counsel, not related to counsel or the parties hereto, and not in any way interested in the outcome of this matter.

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